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10/800,810

03/15/2004

Joseph Raymond Faryniarz

J6832(C)

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EXAMINER

YU, GINA C

ART UNIT

PAPER NUMBER

1617

MAIL DATE

DELIVERY MODE

05/17/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 10/800,810 | Applicant(s) FARYNIARZ ET AL. | |
| | Examiner Gina C. Yu | Art Unit 1617 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 3/5/2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt is acknowledged of amendment filed on March 5, 2007. The claim rejections made under 35 U.S.C. § 103 (a), as indicated in the previous Office action dated October 5, 2006, have been withdrawn in view of further consideration. New rejections are made as below.

Terminal Disclaimer

The terminal disclaimer filed on February 26, 2007, disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 6730717 and 6770689 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3, and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over as Paniccia (Poucher's Perfumes, Cosmetics and Soaps, 2000) and Jokura et al. (US 5,641,495).

Paniccia teaches a method of shaving hair by applying shaving lather cream directly onto an area of skin to form a dispersed layer of the shaving preparation, followed by shaving the area with a razor. See col. 1, lines 56 – 61; instant claims 1 and 6. The reference teaches a formulation which comprises glycerol, which is a moisturizer. See p. 351, Formula I. The reference also teaches post-foaming gel which forms a dense creamy foam which conveys rich moisturizing properties. See p. 353.

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The reference also teaches that a skilled artisan would have been concerned with skin irritation and inflammation caused by in-grown hair and shaving process. See p. 348, bridging par.

While Paniccia indicates that the shaving preparations require skin-conditioning agents, such as moisturizing agents, the reference does not specifically teach using malonic acid or its salts.

Jokura teach the use of the amine salts of malonic acid in cosmetically acceptable vehicles. See col. 3, lines 31 – 50. Alkanolamines such as triethanolamine salts and ammonium salts are taught. See instant claims 1, 3, 4. The reference teaches that the malonic acid salts moisturize the skin without irritation. The reference teaches the application of the moisturizing agent in emulsion or gel form which is thereby formulated to lotion or cream. See col. 3, lines 66 – col. 4, line 4. The reference teaches that to achieve a satisfactory moisturizing effect without irritation, 0.01-10 % by weight of the acid or salt is used. See col. 3, lines 51 – 36. Using water, ethanol, and/or water-soluble polyhydric alcohols are used in the amount of 0.01-95 % by weight of the total composition. See col. 4, lines 29 – 34.

Curtis teaches that therapeutic organic acids, which are useful for treating dry skin, ichthyosis, etc., are also useful for treating disorders associated with ingrown hair, folliculitis, and Pseudofolliculitis barbae. The reference teaches “the therapeutic organic acids soften hair and aid in the elimination of ingrown hairs, thus making therapeutic organic acids useful as components in shaving compositions”. See col. 1, lines 15-42.

By the "therapeutic organic acids", the reference teaches carboxylic acids. See col. 2, lines 17-18.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the shaving preparations of Paniccia by incorporating malonic acid salts, as motivated by Jokura and Curtis, because 1) Paniccia teaches adding skin conditioning agents to the shaving preparation, which particularly is designed for areas of skin which is prone to skin irritation; and 2) Jokura teaches that the salts of malonic acids, such as triethanolamine or ammonium salts of malonic acid, are non-irritating and moisturizes the skin; and 3) Curtis teaches that therapeutic organic acids, such as carboxylic acids that treat dry skin, soften and eliminates ingrown hair, and specifically indicates that these organic acids are useful for shaving preparations. The skilled artisan would have had a reasonable expectation of 1) successfully making a stable cream or gel preparations comprising the amine salts of malonic acid, because Jokura teaches that the salts of malonic acids can be used in emulsions, gels, and cream; and 2) successfully softening and eliminating ingrown hair by using the shaving composition comprising malonic acids or its salts.

Claims 2 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over as Paniccia, Jokura, and Curtis, as applied to claims 1, 3, and 4 as above, and further in view of Flick (Cosmetic and Toiletry Formulations, 1996).

While Jokura teaches alkanolamine salts of malonic acid and other dicarboxylic acids, the reference does not specifically teach trishydroxymethylaminomethane salts.

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Flick teaches that tris(hydroxymethyl)aminomethane is an old and well known buffering agent in cosmetic art. The reference teaches an aftershave gel formulations which contains neutralized product of carbomer 980 (polyacrylic acid) with Tris Amino. See p. 508, Aftershave gel. Tris amino is tris(hydroxymethyl)aminomethane. See p.543, Sun protection gel.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to further modify the shaving preparation of the combine references by using the salts of tris(hydroxymethyl)aminomethane and dicarboxylic acids, as motivated Flick, because 1) Paniccia teaches making non-irritating shaving preparations using moisturizing agents; 2) Jokura teaches using alkanolamine salts of dicarboxylic acids as non-irritating moisturizing agent in cosmetic compositions; and 3) Flick teaches that trishydroxymethylaminomethane, an alkanolamine, is conventionally used in shaving preparations as a neutralizing agent. The skilled artisan would have had a reasonable expectation of successfully producing a stable and non-irritating shaving composition containing the trishydroxymethylaminomethane salt of the dicarboxylic acids.

Response to Arguments

Applicant's arguments with respect to claims 1-4, 6 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

No claims are allowed.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 8:00AM until 5:30 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Gina C. Yu
Patent Examiner